

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION**

**Case No. 7:16-cv-30**

BONNIE PELTIER, as Guardian  
of A.P., a minor child;

ERIKA BOOTH, as Guardian  
of I.B., a minor child; and

PATRICIA BROWN, as Guardian  
of K.B., a minor child;

Plaintiffs,

v.

CHARTER DAY SCHOOL, INC.; ROBERT P.  
SPENCER; CHAD ADAMS; SUZANNE WEST;  
COLLEEN COMBS; TED BODENSCHATZ; and  
MELISSA GOTT in their capacities as members of the  
Board of Trustees of Charter Day School, Inc.; and  
THE ROGER BACON ACADEMY, INC.;

Defendants.

**PLAINTIFFS' UNOPPOSED  
MOTION FOR SUBSTITUTION OF  
REAL PARTY IN INTEREST**

Plaintiffs in the above-captioned matter, by and through their attorneys, respectfully move the Court for an order substituting Keely Burks for Patricia Brown, as Guardian of K.B., a minor child, as the real party in interest now that Ms. Burks has reached the age of majority.

In support of this Motion, Plaintiffs state as follows:

1. Plaintiff's Amended Complaint names, among others, "Patricia Brown, as Guardian of K.B., a minor child" as a Plaintiff. [DE 13]

2. Because K.B. was a minor, under Fed. R. Civ. P. 5.2, the caption could include only her initials. Under Fed. R. Civ. P. 17(c) and E.D.N.C. Local Rule 17.1, she was required to be represented by a legal guardian.

3. On June 21, 2016, on Plaintiffs' unopposed motion [DE 42], this Court appointed Patricia Brown as *Guardian ad Litem* to K.B. for purposes of prosecuting this case. [DE 47]

4. On March 22, 2019, Ms. Burks turned 18 years old. Having reached the age of majority under North Carolina law, *see* N.C. Gen. Stat. § 48A-2, she is now able to represent herself in this action and her name need no longer be referenced by her initials.

5. The Federal Rules of Civil Procedure ("FRCP") apparently do not contain a specific provision for substitution when a minor plaintiff reaches the age of majority; however, courts have previously substituted plaintiffs as the real party in interest in such circumstances under FRCP Rule 17(a)(3), Rule 15, and Rule 25. *See Brooks v. District of Columbia*, 841 F. Supp. 2d 253, 260–261 (D.D.C. 2012) (permitting substitution of the real party in interest under FRCP Rule 17(a)(3) after defendants challenged a guardian's standing to pursue an action on behalf of a plaintiff who had turned 18); Minute Order granting Pls.' Mot. to Substitute, *Clay v. District of Columbia*, No. 09-cv-01612 (D.D.C. Apr. 24, 2013) (same); *Walker v. Evans*, No. 10-12596, 2011 WL 3583248, at \*1 (E.D. Mich. Aug. 15, 2011) (recognizing that substitution of plaintiffs as real parties in interest after reaching the age of majority would be appropriate under FRCP Rule 15 or Rule 25). If Ms. Burks is substituted as the real party in interest, this action will proceed "as if it had originally been commenced by [her]." FRCP Rule 17(a)(3).

6. Plaintiffs respectfully request the Court allow the modification of the caption to name Keely Burks correctly as Plaintiff in her own right, and that the Court remove Patricia Brown as Ms. Burks' *Guardian ad Litem* for purposes of prosecuting this case.

7. Plaintiffs have consulted with counsel for Defendants and they do not oppose this motion.

8. Plaintiffs have included with this Motion a proposed Order for this Court's consideration.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Motion be granted and that the Court enter an order: (i) substituting Keely Burks as the real party in interest in place of Patricia Brown, as Guardian of K.B., a minor child; (ii) removing Patricia Brown as Ms. Burks *Guardian ad Litem* for purposes of prosecuting this case, and (iii) directing the Clerk of the Court to modify the caption to change the name of "Patricia Brown, as Guardian of K.B., a minor child" to "Keely Burks."

Respectfully submitted this the 21st day of October, 2019.

ELLIS & WINTERS LLP

/s/ Jonathan D. Sasser

Jonathan D. Sasser  
NC State Bar No. 10028  
ELLIS & WINTERS, LLP  
Post Office Box 33550  
Raleigh, NC 27636  
Telephone: (919) 865-7000  
Facsimile: (919) 865-7010  
jon.sasser@elliswinters.com  
Local Civil Rule 83.1 Counsel

AMERICAN CIVIL LIBERTIES UNION  
OF NORTH CAROLINA LEGAL FOUNDATION

/s/ Irena Como (with permission)

Irena Como  
NC Bar No. 51812  
Acting Legal Director  
American Civil Liberties Union of North Carolina  
Legal Foundation  
Post Office Box 28004  
Raleigh, North Carolina 27611  
Telephone: (919) 834-3466  
Facsimile: (866) 511-1344  
icom@acluofnc.org

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

/s/ Galen Sherwin (with permission)

Galen Sherwin

(LR 83.1(a) special appearance)

Amy Lynn Katz

(LR 83.1(a) special appearance)

Women's Rights Project

125 Broad Street, 18th Floor

New York, NY 10004

Telephone: (212) 549-2615

gsherwin@aclu.org

wrp\_ak@aclu.org

*Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2019, I electronically filed the foregoing **Plaintiffs' Unopposed Motion for Substitution of Real Party in Interest** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jonathan D. Sasser